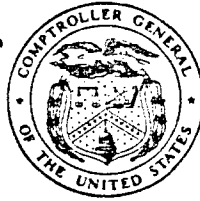


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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-202232**DATE:** July 10, 1981**MATTER OF:** Military Members' Travel to Appear
as Witnesses in State Courts

DIGEST: Regulations may be issued authorizing the payment of travel and transportation allowances of members of the uniformed services who are requested to appear as witnesses for a State government in criminal proceedings, provided a determination is made in each situation that the travel is necessary and in the interest of the service because the court action is one directly related to the service or its members and is one in which the service has a strong interest.

This action is in response to a letter from the Acting Assistant Secretary of the Army (Manpower and Reserve Affairs) requesting a decision on whether we would object to a proposed revision of paragraph M6300 of the Joint Travel Regulations, Volume 1 (1 JTR). Under the proposed revision a member of the uniformed services on active duty requested to appear as a witness for a State government in a criminal prosecution which is directly related to the service or its members, and is one in which the service takes a particularly strong interest, would be entitled to military travel and transportation allowances. This request was assigned Control Number 81-6 by the Per Diem, Travel and Transportation Allowance Committee.

The letter states that paragraph M6300, 1 JTR, currently permits Government funded travel of a member required to appear as a witness on behalf of the United States in any case involving the uniformed services. However in those cases not involving the uniformed services where the member is required to appear on behalf of the United States, the member may receive transportation or transportation allowances and per diem as prescribed by the Attorney General. In other cases, a member required to appear as a witness for a State, the District of Columbia, a Committee of Congress or a private corporation may not receive any allowance for travel and transportation from the service with which he is serving. Arrangements for such payments must be made between the witness and the individual or agency desiring his testimony.

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The submission states that military courts have no jurisdiction to try civilian criminal offenders and often military courts cannot establish jurisdiction when the crime, although committed by a military member, is not committed on a military installation. Under current JTR provisions, the travel expenses of uniformed services members for travel to State criminal proceedings may not be paid by the services even though the member may be a key witness and the case is one in which the military may have a strong interest. The submission states that this lack of authority puts the military in the role of frustrating civilian proceedings, particularly when it has been necessary to transfer the member away from the area where the criminal proceeding is to take place. In referring the matter to this Office for decision, the Acting Assistant Secretary indicates that the Committee is reluctant to process the proposed revision in view of our decision in 46 Comp. Gen. 613 (1967).

In 46 Comp. Gen. 613 we objected to a proposed revision to the JTR which would have entitled any member of the uniformed services ordered to appear as a witness on behalf of the United States to receive military travel and transportation allowances as being contrary to 28 U.S.C. § 1823. Under our view of section 1823(a), the services could provide for travel allowances for a member ordered to appear as a witness on behalf of the United States only if the case involved the uniformed services. Otherwise, in cases not involving the uniformed services, the regulations of the Attorney General would govern. Since the proposed JTR revision was not limited to cases involving the uniformed services, we objected on the grounds it was contrary to the statute. Section 1823, which was interpreted to apply to both military and civilian personnel, has since been repealed and has been replaced by 5 U.S.C. § 5751, which applies only to civilian employees. See the Act of December 19, 1970, Public Law 91-563, sections 4 and 5, 84 Stat. 1477-1478. While 28 U.S.C. § 1821 (Supp. III, 1979) generally provides for travel allowances for witnesses appearing in Federal court proceedings, there is no statute specifically authorizing payment by the Government of travel expenses for a member of the uniformed services appearing as a witness in a State court proceeding. Therefore, if such authority exists, it must be found in the general statutory authority for the travel of service members at Government expense.

Generally, the travel of members of the uniformed services at Government expense is authorized by 37 U.S.C. § 404 (1976) which provides that under regulations prescribed by the Secretaries concerned, a member is entitled to travel and transportation allowances for travel performed under orders, upon a permanent change of station or otherwise, or when away from his designated duty station. Paragraph M3050-1, 1 JTR, issued pursuant to that authority provides that members are entitled to these allowances only while actually in a travel status and they shall be deemed to be in a travel status while performing travel away from their permanent duty station, on public business, pursuant to competent travel orders.

In construing the term "public business" we have held that it relates to the activities or functions of the service to which the traveler is attached, and the travel contemplated is that which reasonably may be considered as having been performed in the accomplishment of the purposes and requirements of such activities and functions. 55 Comp. Gen. 1332, 1334 (1976). In other words, travel allowances are authorized for members of the uniformed services for the purpose of reimbursing them for the expenses incurred in complying with the travel requirements imposed upon them by the needs of the services over which they have no control, not for expenses of travel considered as made for personal business. 51 Comp. Gen. 548 (1972) and 49 Comp. Gen. 663 (1970).

The submission indicates that the relevant statutes and cases do not preclude the proposed change since it would be limited to a small class of cases in which the services have a strong interest. Specifically it is argued that such travel to State criminal proceedings can be accommodated within the definition of public business on the basis that:

- (1) In the case of military offenders the prosecution of the case can be considered primarily for the benefit of the service because it serves the service's fundamental need to maintain discipline;
- (2) In the case of civilian offenders, the prosecution of cases in which the military has a very strong interest is important to the morale and welfare of military members and their families in the aggregate; and

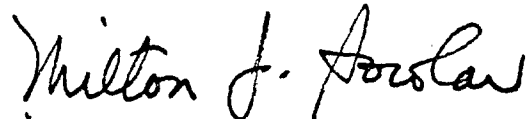
(3) The travel is not for the member's personal convenience.

The proposed revision would read in substance as follows:

"When a member on active duty is requested to appear as a witness for a state government in the prosecution of crimes directly related to the military or to military members and in which the military takes a particularly strong interest, he may receive the travel and transportation allowances prescribed in Chapter 4, payable from the funds of the requesting service."

Generally, the determination that travel is necessary for the transaction of official (public) business and the circumstances and conditions under which such travel is to be performed is an administrative matter within the discretion of the agency concerned. Therefore, in order for the travel of a member of the uniformed services as a witness in a State criminal prosecution to be authorized at Government expense, a determination would have to be made based on the facts of each situation, that the travel was to be performed because of the needs of the service. In this regard compare 53 Comp. Gen. 214 (1973) and 44 Comp. Gen. 188 (1964) in which we authorized payment of travel allowances of Government civilian employees who traveled to testify as witnesses in State court criminal proceedings brought against other employees who were involved in automobile accidents while traveling on official business.

Accordingly, provided the necessary determination is made in each situation, and the case is one directly related to the service or its members and is one in which the service has a strong interest, we would not object to the proposed revision.



Acting Comptroller General
of the United States